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FILED IN THE U.S. DISTRICT COURT
EASTERN DISTRICT OF WASHINGTON

JUN 22 2021

SEAN F. MCAVOY, CLERK
DEPUTY
YAKIMA, WASHINGTON

UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF WASHINGTON

UNITED STATES OF AMERICA,

Plaintiff,

v.

DEREK LEVI MARTINEZ,

Defendant.

1:20-CR-02030-SMJ-2

Plea Agreement

Plaintiff United States of America, by and through Joseph H. Harrington, Acting United States Attorney for the Eastern District of Washington, and Richard C. Burson, Assistant United States Attorney for the Eastern District of Washington, and Defendant Derek Levi Martinez (hereinafter "Defendant"), and the Defendant's counsel, Tim Nguyen, Esq., agree to the following Plea Agreement:

1. Guilty Plea and Maximum Statutory Penalties:

The Defendant agrees to plead guilty to Count 4 of the Second Superseding Indictment filed on May 12, 2021, charging the Defendant with Aiding and Abetting in the offense of Brandishing a Firearm in Furtherance of a Crime of

1 Violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii); 2.

2 The Defendant understands that the statutory penalty for Aiding and
3 Abetting in the offense of Brandishing a Firearm in Furtherance of a Crime of
4 Violence in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii); 2, is not less than 7 years
5 imprisonment and up to life imprisonment; a fine of \$250,000; or both; a term of
6 supervised release of not more than 5 years; and a \$100 special penalty assessment.

7 The Defendant understands that a violation of a condition of supervised
8 release carries an additional penalty of re-imprisonment for all or part of the term
9 of supervised release without credit for time previously served on post-release
10 supervision.

11 2. The Court is Not a Party to the Agreement:

12 The Court is not a party to this Plea Agreement and may accept or reject this
13 Plea Agreement. Sentencing is a matter that is solely within the discretion of the
14 Court. The Defendant understands that the Court is under no obligation to accept
15 any recommendations made by the United States and/or by the Defendant; that the
16 Court will obtain an independent report and sentencing recommendation from the
17 U.S. Probation Office; and that the Court may, in its discretion, impose any
18 sentence it deems appropriate up to the statutory maximums stated in this Plea
19 Agreement.
20

21 The Defendant acknowledges that no promises of any type have been made
22 to the Defendant with respect to the sentence the Court will impose in this matter.
23 The Defendant understands that the Court is required to consider the applicable
24 sentencing guideline range, but may depart upward or downward under the
25 appropriate circumstances.

26 The Defendant also understands that should the sentencing judge decide not
27 to accept any of the parties' recommendations, that decision is not a basis for
28 withdrawing from this Plea Agreement or a basis for withdrawing this plea of

1 guilty.

2 3. Waiver of Constitutional Rights:

3 The Defendant understands that by entering this plea of guilty the Defendant
4 is knowingly and voluntarily waiving certain constitutional rights, including:

- 5 a. The right to a jury trial;
- 6 b. The right to see, hear and question the witnesses;
- 7 c. The right to remain silent at trial;
- 8 d. The right to testify at trial; and
- 9 e. The right to compel witnesses to testify.

10 While the Defendant is waiving certain constitutional rights, the Defendant
11 understands the Defendant retains the right to be assisted through the sentencing
12 and any direct appeal of the conviction and sentence by an attorney, who will be
13 appointed at no cost if the Defendant cannot afford to hire an attorney.

14 4. Elements of the Offenses:

15 The United States and the Defendant agree that in order to convict the
16 Defendant of aiding and abetting in the offense of Brandishing a Firearm in
17 Furtherance of a Crime of Violence, in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii);
18 2, as charged in the Second Superseding Indictment, the United States must prove
19 beyond a reasonable doubt the following elements:
20

21 First, on or about July 5, 2020, within the Eastern District of Washington,
22 someone else committed the offense of Brandishing a Firearm in Furtherance of a
23 Crime of Violence;

24 Second, the Defendant aided, counseled, commanded, induced or procured
25 that person with respect to at least one element of Brandishing of a Firearm in
26 Furtherance of a Crime of Violence;

27 Third, the Defendant acted with the intent to facilitate the offense of
28 Brandishing of a Firearm in Furtherance of a Crime of Violence; and

1 Fourth, the Defendant acted before the crime was completed.

2 *9th Cir. Model Jury Instr. 5.1 (Approved 9/2019)(modified)*

3 The United States and the Defendant agree that as to Brandishing of a
4 Firearm in Furtherance of a Crime of Violence, in violation of 18 U.S.C. §§
5 924(c)(1)(A)(ii), the following elements are applicable:

6 First, the Defendant committed the crime of carjacking, as charged in Count
7 2 of the Second Superseding Indictment, which is a crime of violence;

8 Second, the Defendant knowingly possessed a Ruger 10-22 .22LR caliber
9 rifle bearing serial number 242-44238; and

10 Third, the Defendant possessed the firearm in furtherance of the carjacking.

11 *9th Cir. Model Jury Instr. 8.72 (Approved 4/2011)(modified).*

12 5. Factual Basis and Statement of Facts:

13 The United States and the Defendant stipulate and agree that the following
14 facts are accurate; that the United States could prove these facts beyond a
15 reasonable doubt at trial; and these facts constitute an adequate factual basis for
16 Defendant's guilty plea. This statement of facts does not preclude either party from
17 presenting and arguing, for sentencing purposes, additional facts which are
18 relevant to the guideline computation or sentencing, unless otherwise prohibited in
19 this agreement.
20

21 On July 5, 2020, the Defendant approached a man named J.H. outside of a
22 restaurant near the intersection of S 4th Avenue and W. Walnut Street in Yakima,
23 Washington. The Defendant and J.H. spoke briefly near J.H.'s car before the
24 Defendant asked J.H. to drive the Defendant to the Defendant's car, which was
25 parked behind an auto parts store located at 305 N 5th Avenue in Yakima,
26 Washington. J.H. drove the Defendant to this location in J.H.'s 1996 Honda
27 Accord, a motor vehicle that had been transported, shipped, and received in
28 interstate and foreign commerce. J.H.'s significant other, K.S., was also in the

1 vehicle.

2 J.H. parked his car behind the auto parts store located at 305 N 5th Avenue in
3 Yakima, Washington. Shortly after, a green Ford Explorer driven by a man named
4 Jesse Johnson arrived and parked behind J.H.'s vehicle in such a manner as to
5 prevent J.H.'s vehicle from leaving the location. A man named Orlando Raul
6 Rodriguez and a woman named Cherrish Irean Jensen got out of the green Ford
7 Explorer. Rodriguez approached the front driver's side of J.H.'s Honda Accord,
8 where J.H. was sitting in the driver's seat. Rodriguez was carrying a Ruger 10-22
9 .22LR caliber rifle bearing serial number 242-44238. Rodriguez ordered J.H. out of
10 the car while pointing the rifle at J.H. J.H. complied and exited the Honda Accord.
11 Jensen ordered J.H. to hand over his cell phone and walk away from the scene. J.H.
12 gave his cell phone to Jensen and walked away with K.S.

13 Jensen got into the driver's seat of the Honda Accord. Rodriguez and the
14 Defendant also got into J.H.'s Honda Accord. The three drove away in J.H.'s
15 Honda Accord. Johnson followed in the Ford Explorer. Jensen drove J.H.'s Honda
16 Accord to a residential complex at 810 N 6th Avenue in Yakima, Washington.
17 Jensen, Rodriguez, and the Defendant exited J.H.'s Honda Accord. Jensen,
18 Rodriguez, and the Defendant took several items of J.H.'s personal property out of
19 J.H.'s Honda Accord and loaded them into the green Ford Explorer that Johnson
20 had followed them in. Jensen, Rodriguez, and the Defendant got into Johnson's
21 green Ford Explorer and Johnson drove away, leaving J.H.'s Honda Accord parked
22 within the residential complex.

23 Johnson drove the green Ford Explorer, with Jensen, Rodriguez, and the
24 Defendant as passengers, past a hardware store located at 405 W. Yakima Avenue
25 in Yakima, Washington, where J.H. and K.S. were talking to Yakima Police
26 Department officers in the parking lot. Police officers at that location conducted a
27 vehicle stop and pulled over the Ford Explorer driven by Johnson.
28

1 The Defendant exited the vehicle and was placed under arrest. Johnson,
2 Jensen and Rodriguez were ordered out of the vehicle and arrested. Police officers
3 observed from outside the vehicle what appeared to be the stock of a wood handled
4 rifle laying on the backseat floorboard of Johnson's green Ford Explorer. A police
5 officer called J.H.'s cell phone number, provided by J.H., and heard a cell phone
6 ringing in Johnson's Ford Explorer.

7 J.H. was brought to the location of the vehicle stop and identified Rodriguez
8 as the individual who had pointed the rifle at him; Johnson as the one who had
9 driven Jensen and Rodriguez to the scene of the robbery and the Defendant as the
10 one who had approached him at the restaurant near the intersection of S 4th
11 Avenue and W. Walnut Street in Yakima, Washington and asked him for a ride to
12 the auto parts store at 305 N 5th Avenue in Yakima, Washington and then left with
13 Rodriguez and Jensen after the robbery.

14 J.H. was interviewed by a Yakima Police Department detective and
15 identified several items photographed from outside of Johnson's Ford Explorer as
16 belonging to him, including a tool kit and white tub of degreaser, and a pair of
17 black slippers belonging to K.S. J.H. told the detective that his car had also
18 contained some auto detailing tools, including a buffer, and his car keys. J.H.
19 specified that his cell phone was a Cool-Pad Android phone.

20 Police executed a search warrant on Johnson's Ford Explorer. Police
21 recovered from Johnson's Ford Explorer a Cool-Pad Android cell phone, a tub of
22 degreaser, black slippers, the keys to J.H.'s Honda Accord, a tool kit, a car buffer,
23 and a Ruger 10-22 .22LR caliber rifle bearing serial number 242-44238, among
24 other items.

25 The Defendant knowingly and willingly participated and aided and abetted
26 Johnson, Rodriguez, and Jensen in the taking of J.H.'s 1996 Honda Accord, that
27 had been transported, shipped and received in interstate and foreign commerce,
28

1 from J.H. by force, violence and intimidation, with the intent to cause death and
2 serious bodily harm if needed. The carjacking was the product of an agreement
3 between Rodriguez, Martinez, Jensen and the Defendant to take J.H.'s motor
4 vehicle from J.H. by force, violence and intimidation, with the intent to cause death
5 and serious bodily harm if needed. The Defendant took an affirmative act in
6 furtherance of the above detailed carjacking as described above, with the intent of
7 facilitating the commission of the carjacking. The Defendant knew before
8 participating and aiding and abetting in the above detailed carjacking that Johnson,
9 Rodriguez or Jensen would brandish a firearm during the commission of the above
10 detailed carjacking.

11
12 6. The United States Agrees:

13 The United States Attorney's Office for the Eastern District of Washington
14 agrees not to bring any additional charges against the Defendant based upon
15 information in its possession at the time of this Plea Agreement and arising out of
16 Defendant's conduct involving illegal activity charged in the Second Superseding
17 Indictment, unless the Defendant breaches this Plea Agreement any time before or
18 after sentencing. The United States further agrees to dismiss Count 2 of Second
19 Superseding Indictment, solely as it relates to the Defendant.

20 7. United States Sentencing Guideline Calculations:

21 The Defendant understands and acknowledges that the United States
22 Sentencing Guidelines (hereinafter "U.S.S.G.") are advisory to this case and that
23 the Court will determine the Defendant's applicable sentencing guideline range at
24 the time of sentencing.

25 The United States and the Defendant agree that the guideline sentence is the
26 minimum term of imprisonment required by 18 U.S.C. § 924(c)(1)(A)(ii); i.e. 7
27 years of imprisonment.
28

1 8. Criminal History:

2 The United States and the Defendant understand that the Defendant's
3 criminal history computation ultimately will be determined by the Court after
4 review of the Presentence Investigation Report. The United States and the
5 Defendant have made no agreement and make no representations as to the criminal
6 history category, which shall be determined after the Presentence Investigation
7 Report is completed.

8 9. Incarceration:

9 The United States and the Defendant agree to recommend a term of
10 imprisonment of 7 years.

11 10. Criminal Fine:

12 The United States and the Defendant have made no agreement as to any
13 criminal fine to be imposed.

14 11. Supervised Release:

15 The United States and the Defendant agree to recommend that the Court
16 impose a five (5) year term of supervised release.

17 12. Mandatory Special Penalty Assessment:

18 The Defendant agrees to pay the \$100 mandatory special penalty assessment
19 to the Clerk of Court for the Eastern District of Washington, at or before
20 sentencing, pursuant to 18 U.S.C. § 3013 and shall provide a receipt from the Clerk
21 to the United States before sentencing as proof of this payment.

22 13. Payments While Incarcerated:

23 If the Defendant lacks the financial resources to pay the monetary
24 obligations imposed by the Court, the Defendant agrees to earn the money to pay
25 toward these obligations by participating in the Bureau of Prisons' Inmate
26 Financial Responsibility Program.
27
28

1 14. Additional Violations of Law Can Void Plea Agreement:

2 The Defendant and the United States agree that the United States may at its
3 option and upon written notice to the Defendant, withdraw from this Plea
4 Agreement or modify its recommendation for sentence if, prior to the imposition of
5 sentence, the Defendant is charged or convicted of any criminal offense
6 whatsoever or if the Defendant tests positive for any controlled substance.

7 15. Criminal Forfeiture:

8 Defendant, Derek Levi Martinez, agrees to voluntarily forfeit any and all
9 right, title and interest he has in the following listed assets in favor of the United
10 States:

- 11 - a Ruger 10-22 .22LR caliber rifle bearing serial number 242-44238
- 12 - 14 rounds of Remington .22 mm caliber ammunition

13 Defendant acknowledges that the firearm and ammunition covered by this
14 agreement are subject to forfeiture as property facilitating or involved in illegal
15 conduct in violation of 18 U.S.C. §§ 924(c)(1)(A)(ii); 924(a)(2), and are therefore
16 forfeitable to the United States pursuant to 18 U.S.C. § 924(d)(1) and 28 U.S.C. §
17 2461(c).
18

19 The Defendant agrees to take all steps as requested by the United States to
20 pass clear title to the firearms to the United States and to testify truthfully in any
21 forfeiture proceeding.

22 The Defendant agrees to hold all law enforcement and the United States, its
23 agents, and its employees harmless from any claims whatsoever arising in
24 connection with the seizure and forfeiture of any asset(s) covered by this
25 agreement. Defendant consents to the forfeiture and disposal of assets without
26 further notice.
27
28

1 The Defendant further agrees to waive all constitutional, equitable and
2 statutory challenges in any manner (including direct appeal, habeas corpus, or any
3 other means) to any forfeiture carried out in accordance with this Plea Agreement
4 on any grounds, including that the forfeiture constitutes an excessive fine or
5 punishment. Defendant knowingly and voluntarily waives his right to a jury trial
6 on the forfeiture of the asset(s). Defendant waives oral pronouncement of
7 forfeiture at the time of sentencing, and any defects that may pertain to the
8 forfeiture.

9 16. Restitution:

10 The United States and the Defendant stipulate and agree that, pursuant to 18
11 U.S.C. §3663, §3663A, and §3664, the Court shall order restitution for any and all
12 damaged property, and medical expenses and/or related professional services, in an
13 amount not to exceed \$10,000.00.

14 17. Effect on Immigration Status:

15 The Defendant, recognizes that pleading guilty may have consequences with
16 respect to his immigration status if he is not a citizen of the United States. Under
17 federal law, a broad range of crimes are removable offenses, including the offense
18 to which the Defendant is pleading guilty. Indeed, due to the charge to which
19 Defendant is pleading guilty, removal is presumptively mandatory for non-citizens.
20 Removal and other immigration consequences are the subject of a separate
21 proceeding, however, and Defendant understands that while deportation and/or
22 removal appears to be a virtual certainty if he is a non-citizen, no one, including his
23 attorney or the Court, can predict with absolute certainty the effect of his
24 conviction on his immigration status, if any. Defendant nevertheless affirms that
25 he wants to plead guilty regardless of any immigration consequences that his plea
26 may entail, even if automatic removal from the United States is a virtual certainty
27
28

1 if he is a non-citizen.

2 18. Appeal Rights

3 The Defendant expressly waives his right to appeal any aspect of his
4 conviction and sentence imposed by the Court. The Defendant expressly waives
5 his right to appeal any order of restitution so long as the order of restitution does
6 not exceed \$10,000.00. Furthermore, the Defendant expressly waives his right to
7 file any post-conviction motion attacking his conviction and sentence, including a
8 motion pursuant to 28 U.S.C. § 2255, except one based upon ineffective assistance
9 of counsel based on information not now known by Defendant and which, in the
10 exercise of due diligence, could not be known by Defendant by the time the Court
11 imposes the sentence.

12 The Defendant acknowledges that this waiver shall result in the dismissal of
13 any appeal or collateral attack the defendant might file challenging the conviction
14 or sentence in this case, except for ineffective assistance of counsel as noted above.
15 If the Defendant files a notice of appeal, a habeas petition, or other collateral
16 attack, notwithstanding this agreement, the Defendant agrees that this case shall,
17 upon motion of the government, be remanded to the district court to determine
18 whether Defendant is in breach of this agreement and, if so, to permit the
19 government to withdraw from the Plea Agreement.

20 19. Integration Clause:

21 The United States and the Defendant acknowledge that this document
22 constitutes the entire Plea Agreement between the United States and the
23 Defendant, and no other promises, agreements, or conditions exist between the
24 United States and the Defendant concerning the resolution of the case. This Plea
25 Agreement is binding only upon the United States Attorney's Office for the
26 Eastern District of Washington, and cannot bind other federal, state or local
27 authorities. The United States and the Defendant agree that this agreement cannot
28

1 be modified except in a writing that is signed by the United States and the
2 Defendant.

3
4 Approvals and Signatures

5 Agreed and submitted on behalf of the United States Attorney's Office for
6 the Eastern District of Washington.

7
8 Joseph H. Harrington
9 Acting United States Attorney

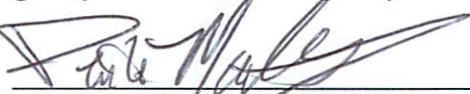
10 
11 Richard C. Burson

12 Assistant United States Attorney

21 June 2021

Date

13 I have read this Plea Agreement and have carefully reviewed and discussed
14 every part of the agreement with my attorney. I understand and voluntarily enter
15 into this Plea Agreement. Furthermore, I have consulted with my attorney about
16 my rights, I understand those rights, and I am satisfied with the representation of
17 my attorney in this case. No other promises or inducements have been made to
18 me, other than those contained in this Plea Agreement, and no one has threatened
19 or forced me in any way to enter into this Plea Agreement. I am agreeing to plead
20 guilty because I am guilty.

21 
22 Derek Levi Martinez

23 Defendant

6-21-21

Date

24 I have read the Plea Agreement and have discussed the contents of the
25 agreement with my client. The Plea Agreement accurately and completely sets
26 forth the entirety of the agreement between the parties. I concur in my client's
27 decision to plead guilty as set forth in the Plea Agreement. There is no legal reason
28

1 why the Court should not accept the Defendant's plea of guilty.

2 
3 _____
4 Tim Nguyen

5 Attorney for the Defendant

6 Date 06/21/21